

ADVERTISING AND SALES CLAIMS

Fraudulent Representations

Wisconsin Statutes section 100.18 (Fraudulent Representations) was first enacted in 1913. This law broadly prohibits advertising and sales claims that are “untrue, deceptive or misleading.” It also prohibits a number of specific misrepresentations.

- The law applies to claims made to induce any person to buy or enter into a contract related to real estate, merchandise, securities, employment or services. It does not apply to the insurance business.
- The law covers oral, written and broadcast claims.¹ It was originally limited to “advertisements,” but was expanded in 1945 to cover “any advertisement, announcement, statement or representation.” (Chapter 399, Laws of 1945.)
- An untrue or misleading statement may violate the law, even if there is no proof that the seller intended to deceive² or that consumers were deceived in fact.³ Statements that are literally true may violate the law if they convey a misleading impression.⁴
- The law may be applied to a variety of deceptive schemes, including bait and switch, lowball advertising, free gift offers, worthless guarantees, business opportunity schemes, deceptive close-out sales, deceptive pricing, deceptive performance claims and others.
- The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) enforces the law with help from the Department of Justice and district attorneys (see Wisconsin Statutes sections 100.18(11) and 100.26). DATCP may seek a variety of court remedies including injunctions, restitution and civil forfeitures.

¹ *State v. Automatic Merchandisers of America, Inc.*, 64 Wis. 2d 659 (1974), *Grube v. Daun*, 173 Wis. 2d 30 (Ct. App. 1992), and *Bonn v. Haubrich*, 123 Wis. 2d 168 (Ct. App. 1985).

² Cf. *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020 (7th Cir. 1988).

³ *Tim Torres Enterprises v. Linscott*, 142 Wis. 2d 56 Ct. App. 1987)

⁴ Cf. *Murray Space Shoe Corp. v. FTC*, 304 F.2d 270 (2d Cir. 1962).

- Consumers may also sue law violators directly, and may recover their monetary damages, costs and attorney fees. See Wisconsin Statutes section 100.18(11)(b). If a seller violates a court injunction, consumers may recover *double* damages.
- The law is interpreted in light of decisions under the Federal Trade Commission Act, which also prohibits deceptive business practices. But the FTC Act does not preempt Wisconsin law, nor do federal decisions necessarily control the interpretation of Wisconsin law.